

ROSE
LAW GROUP
BORTON

DOCKET FILE 001 ORIGINAL

JOE BORTON

6223 N. Discovery Way, Suite 200

Boise, ID 83713

Phone 208.323.5393

Fax 208.658.2371

j.borton@roselawgroup.com

www.roselawgroup.com

Received & Inspected

NOV 21 2008

FCC Mail Room

November 11, 2008

Letter of Appeal
Schools and Libraries Division
Dept. 125 – Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981

FCC
Office of the Secretary
455 12th St SW
Washington DC, 20554

Re: Appeal of Commitment Adjustment Decision
Billed Entity Name: Joint School District #2
FCC Docket No.: 02-6
Form 471 Application Number: 518833
Funding Year: 2006
Applicant's Form Identifier: 2006-02
Billed Entity Number: 142726
FCC Registration Number: 0001631621
SPIN Name: TW Telecom of Idaho LLC
Service Provider Contact Person: Beata Terry

To Whom It May Concern:

This firm represents the Joint School District No. 2 and in that regard we have prepared and submitted this appeal and requested waiver of the Commitment Adjustment Decision issued by your agency (courtesy copy enclosed). The date of the "Notification of Commitment Adjustment Letter" (NCAL) at issue is October 14, 2008, and the Funding request numbers being appealed are #1441812 and #1442073 (courtesy copy enclosed). I have carefully reviewed the documents provided by your agency and my client, reviewed the FCC and USAC regulations, and discussed this with USAC staff and can provide you with the following analysis and basis to support granting this appeal.

The NCAL for both funding requests noted above states that the commitment must be rescinded because "the price of eligible products and services was not the primary factor in the vendor selection process." This conclusion was mistakenly made by reference to the bid evaluation sheets. However, as noted by FCC regulation the requirement that the applicant "select" the most cost effective product was adhered to and that the most cost effective responsive bidder was selected by Joint School District No. 2 in selecting the successful bidder. In both funding request numbers #1441812 and #1442073 the lowest cost responsive bidder was awarded the contract.

No. of Copies rec'd 0
List ABCDE

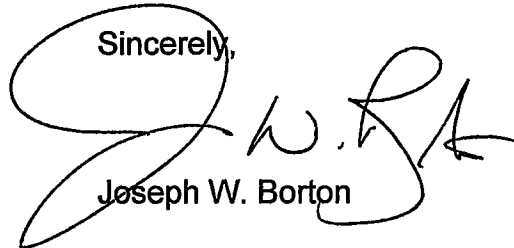
Appeal of Commitment Adjustment Decision
November 11, 2008
Page 2

Received & Inspected
NOV 21 2008
FCC Mail Room

I have discussed this matter at length with USAC staff today (case #21-805708) and it was confirmed that the fact that the school district did in fact select the lowest cost provider was consistent with the intent of the low bidder weight requirement. The intent of all contract rules were adhered to, and no adjustments in funding commitments need be made.

If you have any additional questions or need anything further the person who can most readily discuss this appeal is Dr. Jerry Reininger, Director of Information Systems, and his number is (208) 350-5156. I look forward to your prompt response in affirming our appeal of this NCAL and we look forward to your prompt response in that regard

Sincerely,

A handwritten signature in black ink, appearing to read "J.W.B.", is written over the typed name "Joseph W. Borton". The signature is stylized with a large loop for the "J" and a distinct "B".

Joseph W. Borton

Enclosures

JWB/kdt

USAC

Universal Service Administrative Company

Received & Inspected

NOV 21 2008

FCC Mail Room

Schools & Libraries Division

Notification of Commitment Adjustment Letter**Funding Year 2006: 7/01/2006 - 6/30/2007**

October 14, 2008

Jerry Reininger
MERIDIAN JOINT SCHOOL DIST 2
911 N MERIDIAN RD
MERIDIAN, ID 83642 2241

Re: Form 471 Application Number: 518833

Funding Year: 2006
Applicant's Form Identifier: 2006-02
Billed Entity Number: 142726
FCC Registration Number: 0001631621
SPIN Name: tw telecom of idaho llc
Service Provider Contact Person: Beata Terry

COPY

Our routine review of Schools and Libraries Program funding commitments has revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of the Demand Payment Letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." Please see the "Informational Notice to All Universal Service Fund Contributors, Beneficiaries, and Service Providers" at <http://www.universalservice.org/fund-administration/tools/latest-news.aspx#083104> for more information regarding the consequences of not paying the debt in a timely manner.

TO APPEAL THIS DECISION:

If you wish to appeal the Commitment Adjustment Decision indicated in this letter, your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Numbers you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, Billed Entity Number, and FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter specific and brief, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal electronically, please send your appeal to appeals@sl.universalservice.org using your organization's e-mail. If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Dept. 125 - Correspondence Unit, 100 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Appeals Area of the SLD section of the USAC web site or by contacting the Client Service Bureau at 1-888-203-8100. We strongly recommend that you use the electronic appeals options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site, or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. Immediately preceding the Report, you will find a guide that defines each line of the Report.

The SLD is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these Funding Request Numbers, a separate letter will be sent to the service provider detailing the necessary service provider action.

Please note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Please note the Funding Commitment Adjustment Explanation in the attached Report. It explains why the funding commitment is being reduced. Please ensure that any invoices that you or your service provider submit to USAC are consistent with program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Beata Terry
tw telecom of idaho llc

**Funding Commitment Adjustment Report for
Form 471 Application Number: 518833**

Funding Request Number:	1441812
Services Ordered:	INTERNET ACCESS
SPIN:	143024639
Service Provider Name:	tw telecom of idaho llc
Contract Number:	N/A
Billing Account Number:	(208) 855-4500
Site Identifier:	142726
Original Funding Commitment:	\$19,890.00
Commitment Adjustment Amount:	\$19,890.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date:	\$19,890.00
Funds to be Recovered from Applicant:	\$19,890.00

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, which indicated that Quality of Service, Skill of Vendor, and Ongoing Service and Maintenance Categories had a weighting of 20 points while price only had a weighting of 10 points. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING**

Funding Request Number: 1442073
Services Ordered: INTERNET ACCESS
SPIN: 143024639
Service Provider Name: tw telecom of idaho llc
Contract Number: N/A
Billing Account Number: (208) 855-4500
Site Identifier: 142726
Original Funding Commitment: \$247,689.00
Commitment Adjustment Amount: \$247,689.00
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$0.00
Funds to be Recovered from Applicant: \$0.00
Funding Commitment Adjustment Explanation:

2006

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of review it was determined that the price of eligible products and services was not the primary factor in the vendor selection process. This determination was based on the bid evaluation sheets provided by the applicant, which indicated that Quality of Service, Skill of Vendor, and Ongoing Service and Maintenance Categories had a weighting of 20 points while price only had a weighting of 10 points. FCC rules require that applicants select the most cost-effective product and/or service offering with price being the primary factor. Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. Ineligible products and services may not be factored into the cost-effective evaluation. Since price was not the primary factor in the vendor selection process, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds.

**PLEASE SEND A COPY OF THIS PAGE WITH YOUR
CHECK TO ENSURE TIMELY PROCESSING**